IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Atma Ram & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.664/2001)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 21-8-2001 in Sessions Case No.28/2001 (38/1986) passed by Shri Gopesh Chandra Dixit, RHJS, Additional Sessions Judge (Fast Track) Jhunjhunu.

Date of Judgment: May 02, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. M.M.Ranjan, for appellants Atma Ram and Gyan Chandra.
Mr. Suresh Sahni, for appellants Kailash Chandra, Vijay Kumar & Radha Devi.

Mr. M.L.Goyal, Public Prosecutor for the State.

Mr. A.K.Gupta] for the complainant.
Mr. Mahendra Singh]

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated August 21, 2001 of the learned Additional Sessions Judge (Fast Track) Jhunjhunu, whereby the five appellants were convicted and sentenced as under:-

Appellants Atma Ram & Vijay Kumar:
U/s.302/120B IPC:

Each to suffer imprisonment for life and fine of Rs.5000/-, in default to further suffer rigorous imprisonment for six months.

U/s.460 IPC:

Each to suffer rigorous imprisonment for eight years and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for six months.

U/s.382 IPC:

Each to suffer rigorous imprisonment for eight years and fine of Rs.1000/- in default of payment of fine rigorous imprisonment for six months.

Appellants Gyan Chand, Kailash Chand & Radha Devi
U/s.411 IPC:

Each to suffer rigorous imprisonment for two years and fine of Rs.500/- in default to further suffer rigorous imprisonment for three months.

The substantive sentences were ordered to run concurrently.

2. There is no eye witness of the incident and the conviction of appellants is based on circumstantial evidence. Atma Ram who forwarded a written report on November 12, 1985 through peon Nand Lal to Police Station Udaipurwati (Jhunjhunu) informing about the murder of Keshar Bai, was himself found involved in the guilt along with Vijay Kumar, Gyan Chand, Kailash Chand and Radha Devi. In the report Atma Ram stated that in the preceding night around 12.30 AM he suddenly woke up on hearing the voice of Sweeper Basanti Lal who was asking to open the door of his room which was bolted from out side. Atma Ram then got up and proceeded towards the room of Basanti Lal but the door of Atma Ram's staircase was also bolted from outside, therefore he could not go out and awoke Vijay Kumar, who was residing with him. Vijay Kumar then scaled the roof and unbolted the room of Basanti Lal. Thereafter all the three went down through the staircase and went towards Nohra. They found the room of Keshar Bai open. They called Keshar Bai, but she did not respond. Therefore they entered inside the room and saw Keshar Bai lying dead in naked condition in a pool of blood. Her mouth was tied with saree. On her legs a box was lying open. On that report case under sections 302 and 460 IPC was registered and investigation commenced. After some time investigation was

transferred to CID (CB) Jaipur. After usual investigation charge sheet was filed against Atma Ram, Kailash, Vijay Kumar, Gyan Chand and Radha. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Jhunjhunu. Charges under sections 120B, 302, 460 and 382 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 86 witnesses. In the explanation under Sec.313 Cr.P.C., the accused claimed innocence. Five witnesses in defence were produced. Learned trial Judge on hearing final submissions convicted and sentenced the accused appellants as indicated herein above.

3. We have heard learned counsel for the appellants, learned Public Prosecutor and learned counsel for the complainant and with their assistance scanned the material on record.

4. The first circumstance relied on the prosecution against the appellants, was that death of Keshar Bai was homicidal in nature. Vide Post Mortem Report (Ex.P-24) following ante mortem injuries were found on the dead body:-

1. Incised wound 1” x 1” x 1½” on out side the below jaw lat to trachea
2. three Incised wounds on Lt.side lat.to trachea each measuring as
¼” x ½” x 1” upper 1” x ½” x 1” middle ½” x ¼” x ¼” lower
Incised wound 2” x ½” x ½” above Rt.breast
Incised wound 2” x ½” x ½” above Lt.breast
Three incised wounds below Lt.breast ½” x ¼” x ¼”
IInd 1” x ½” x ¼”, IIIrd ½” x ¼” x ¼”
Incised wound Lt.hand ball side 1” x ½” x ½”
Incised wound Rt.hand ball side 1” x ½” x ½”

In the opinion of Autopsy Surgeon the cause of death was rapid hammorhage due to cut of neck vessels. This circumstance is found established and no objection was raised by the learned counsel for the appellants about this circumstance.

5. The second circumstance against the appellants Atma Ram and Vijay Kumar was that at the time of occurrence they were present near the place of occurrence and the contents of written report forwarded by Atma Ram to the police station Udaipurwati were found false. Having scanned the report we notice that Atma Ram made attempt to create impression that at the time of incident he was sleeping and his staircase, through which he could go out, was bolted from outside. He then woke up Vijay Kumar who was sleeping in his room and pursuaded him to go out. Vijay Kumar then scaled the roof and unbolted the door of staircase. Jaswant Singh (Pw.10) deposed that Keshar was his maternal aunt and although she was nurse in Chhapoli hospital, she used to do money lending business. Just one month prior to her murder she had come to reside in the Hospital on the upper floor of which Dr.Atma Ram used to reside. Basanti Lal (Pw.17) in his deposition stated thus:-

> "यह सही है कि रात को 8 बजे डा0 आत्माराम अस्पताल आए थे और मैं अस्पताल में था। मैं इसी अस्पताल में मेहतर हूं। कजोड व डा0 आत्माराम दोनों ही अस्पताल आए थे। ये दोनों आए तब केसर बाई अस्पताल में ही बाहर बैठी हुई थी। उसके बाद मेरी केसर बाई से कोई बात नहीं हुई। मेरा कमरा व केसर बाई का कमरा एक ही कम्पाउण्ड में है। मैं रात को 11- 11.30 बजे पेशाब करने उठा तो मेरे कमरे के बाहर की कुंदी बन्द थी। फिर मैंने बाई जी को आवाज लगाई कि मेरा कुन्दा बन्द है खोलो। तो बाई जी नहीं बोली। इसके बाद मैंने खिडकी खोलकर डाक्टर साहब को आवाज दी कि मेरी कुन्दी बन्द है खोलो मैं पेशाब करूंगा। तो डाक्टर साहब ने कहा किसने बन्द कर दिया मेरे को तो पता नहीं। कुन्दी विजय कुमार ने खोली जो डा0 आत्माराम का साला है।"

A look at the statement of Vijay Kumar under section 313 CrPC goes to show that when the testimony of Basanti Lal (Pw.17) (फिर डाक्टर साहब को आवाज दी तो कुन्दी विजय कुमार ने खोली जो डा0 आत्माराम के पास ही था।) was read over to him, the answer of Vijay Kumar was "पता नहीं".

6. The prosecution is thus able to establish that:-

(i) On the date of incident till 8 PM Keshar was alive and sitting and when Dr.Atma Ram visited the hospital she was sitting outside the hospital.

(ii) A month prior to her murder Keshar had come to reside in the Hospital.

(iii) Although Keshar was posted as Nurse in the Chhapoli Hospital, she was involved in money lending business.

(iv) Keshar and Dr.Atma Ram along with his Brother-in-law Vijay Kumar were present in the hospital at the time of incident.

(v) Even after the door of staircase was bolted from outside it was possible for Atma Ram and Vijay Kumar to go out of their room by scaling the roof.

(vi) On one hand Dr.Atma Ram stated that it was Vijay Kumar who scaled the roof and unbolted the door of staircase, Vijay Kumar did not accept this contention and expressed ignorance.

(vii) Dr. Atma Ram, Vijay Kumar and Basanti Lal were the first persons went inside the room of Keshar Bai and saw Keshar lying in a pool of blood.

(viii) Dr. Atma Ram himself did not go to the police station but

forwarded written report to the police through his peon.

(ix) Possibility that Dr. Atma Ram had fear to face police officials can not be ruled out.

7. The third circumstance that was found established against appellant Atma Ram is that the ornaments pledged by various persons with Keshar Bai got recovered from the possession of Atma Ram. In the explanation under section 313 CrPC Atma Ram stated that the ornaments recovered by the police belonged to his father who was a money lender and with whom many persons had pledged ornaments with his father. Atma Ram examined himself as defence witness (Dw.4). It is difficult to believe the statement of Atma Ram. His father Purna Nand, who was alive during trial, was not examined by Atma Ram in support of his defence. It is also inexplicable that if the ornaments had been pledged with his father, how Atma Ram got possession over those ornaments. In the cross examination Atma Ram admitted that his father never paid income tax. The prosecution examined as many as sixty witnesses to establish that they had pledged their ornaments with Keshar Bai. Names of these witnesses have been mentioned in para 57 of the impugned judgment. These witnesses identified their ornaments before Tehsildar Udaipurwati, who had drawn various recovery memos. Those ornaments which were identified by the witnesses before Tehsildar, got recovered at the instance of Atma Ram. Shiv Prasad Sharma (Pw.85) recorded the information of Atma Ram in the memo Ex.P-105 and effected recovery of ornaments vide memo (Ex.P-9). Atma Ram also gave information about recovery of ornaments which was recorded in the memo Ex.P-107 and ornaments got recovered vide memo Ex.P-11.

8. Fourth circumstance against appellant Atma Ram is recovery of `knife and screw driver' on the basis of disclosure statement (Ex.P-106) of Atma Ram. Knife got recovered vide recovery memo Ex.P-30, whereas recovery of screw driver was effected vide memo Ex.P-31. Learned counsel for the appellant canvassed that knife and screw driver were neither stained with blood nor they were sent for FSL examination therefore no reliance can be placed on the recovery. We find no merit in this submission. Atma Ram who himself appeared as a witness (Dw.4) did not refute the recovery of knife and screw driver in his deposition.

9. Vijay Kumar was arrested on April 26, 1986 vide arrest memo (Ex.P-115) and on the basis of his disclosure statement (Ex.P-111) ornaments got recovered vide memo Ex.P-5.

10. Learned counsel for the appellants placed reliance on Ravindra Prakash Vs. State of Haryana (AIR 2002 SC 3494), Babuda Vs. State of Rajasthan (AIR 1992 SC 2091), Mahmood Vs. State of UP (AIR 1976 SC 69), Bharat Vs. State of M.P. (AIR 2003 SC 1433), Bhalinder Vs. State of Punjab (1994 CrLR (SC) 62) and Liyakat Ali Vs. State of Rajasthan, 2001 (5) WLC (Raj.) 764.

11. In all the cases cited by learned counsel five principles laid down by Supreme Court for relying on circumstantial evidence, in Sharad Virdhi Chand Vs. State of Maharashtra (AIR 1984 SC 1622) were not satisfied. The principles are:-

(1) the circumstances from which the conclusion of guilt is to

be drawn should be fully established, the circumstances concerned “must or should” and not “may be” established.

(2) the facts `so established should be consistent only with the hypothesis of the guilt of the accused, that is to say they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

12. Having tested the facts and circumstances of the instant case in view of above five golden principles we are satisfied that the prosecution is able to establish that appellants Atma Ram and Vijay Kumar entered into conspiracy to kill Keshar Bai. The appellants Atma Ram and Vijay Kumar and none other else must have killed Keshar Bai in the greed of ornaments which were robbed by them and subsequently recovered from their possession. The circumstances established by the prosecution are like spider's web leaving no exit for the appellants Atma Ram and Vijay Kumar to slip away. The various links in the chain when taken together, unmistakably point out their guilt.

13. We however find that charge under section 411 IPC could not

be established against appellants Gyan Chand, Kailash Chand and Radha Devi. It appears to us that some of the ornaments recovered at the instance of Atma Ram had been shown to have recovered at the instance of Gyan Chand, Kailash Chand and Radha Devi. Possibility of over implication of appellants Gyan Chand, Kailash Chand and Radha Devi cannot be ruled out.

14. For these reasons we dispose of the instant appeal in the following terms:-

(i) We allow the appeal of appellants Gyan Chand, Kailash Chand and Radha Devi and acquit them of the charge under section 411 IPC. These appellants are on bail, they need not surrender and their bail bonds stand discharged.

(ii) We dismiss the appeal of appellants Atma Ram and Vijay Kumar and maintain their conviction and sentence under sections 302/120B, 460 and 382 IPC. Appellant Vijay Kumar, who is on bail shall be taken in custody forthwith. His bail bonds stand cancelled.

(iii) Impugned judgment of learned trial Judge stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

arn/